



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA816]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of Letter of Authorization.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, NMFS issued a Letter of Authorization (LOA) to Hilcorp Alaska LLC (Hilcorp) to take marine mammals incidental to oil and gas activities in Cook Inlet, Alaska.

DATES: Applicable until April 21, 2021.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary

NMFS issued regulations governing the take of 11 species of marine mammal, by Level A and Level B harassment, incidental to Hilcorp’s oil and gas activities on July 31, 2019 (84 FR 37442). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activities. As further detailed in the regulations (50 CFR 217.167), adaptive management measures allow NMFS to modify or renew LOAs as necessary if doing so creates a reasonable likelihood of more effective mitigation and monitoring. NMFS issued the first LOA to Hilcorp under these regulations on July 31, 2019. NMFS published a **Federal Register**

notice seeking public comment on its proposal to modify the Year 1 LOA issued to Hilcorp on August 16, 2019 (84 FR 41957) and published a notice of modification on October 4, 2019 (84 FR 53119). The Year 1 LOA expired on July 30, 2020. To better align with the open water season, Hilcorp applied for their Year 2 LOA with a start date of April 1, 2020, rather than waiting until the expiration of their Year 1 LOA in July 2020. NMFS reviewed the application and issued the Year 2 LOA on April 22, 2020. In error, NMFS did not publish a **Federal Register** notice upon issuance, but the signed LOA and Hilcorp's application were published on NMFS' website immediately upon issuance.

Authorization

NMFS has issued a LOA (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska>) to Hilcorp Alaska LLC for the potential harassment of small numbers of four marine mammal species incidental to oil and gas activities in Cook Inlet, Alaska, provided the mitigation, monitoring and reporting requirements of the rulemaking are incorporated.

Dated: January 15, 2021.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.